



OFFICE OF THE ATTORNEY GENERAL OF TEXAS
AUSTIN

GERALD C. MANN
ATTORNEY GENERAL

Honorable Bascom Giles
Commissioner, General Land Office
Austin, Texas

Dear Mr. Giles:

Opinion No. 0-1512

Re: Authority of Commissioner of
General Land Office to issue
permit to oil and gas lessee
of State land to erect road-
way over submerged land owned
by the State.

In your letter of November 13, 1939, you request the opinion of this department upon the above referred to matter. We quote from your opinion request as follows:

"Sinclair Prairie Oil Company is prepared to drill a well on Tract 688, Nueces Bay, in Nueces County. It seems that the north part of this bay is very shallow water, and since they cannot use boats or barges, they are confronted with the matter of ingress and egress to and from this property. You will observe from plat enclosed in our letter of September 27, 1939, that Tract 686 lies immediately north of this tract 688. Said Tract 686 is unleased.

"In letter of Sinclair to this office dated September 14, they desire to know if a permit could be granted by the State authorizing them to construct a roadway across 686, which is on the coast line, to their well location on 688 thus giving them an outlet to their property. In our said letter of September 27, we enclosed copies of our correspondence with Sinclair in connection with this matter. Several of our mineral laws appear to at least imply that every assistance possible shall be rendered the owners of State leases in developing the property. However, this is the first instance of which I am advised where the State has been called on to grant such permit as

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requested by Sinclair. Will you kindly advise this department if, in your opinion, we would be authorized in issuing such permit to give Sinclair access to this Tract 688 across Tract 685.

"This is to request that you disregard our letter of September 27, 1939, and to substitute this request for an opinion in lieu thereof."

Your question calls for our opinion as to whether or not the Commissioner of the Land Office, under the facts and circumstances related in your letter, has the authority to issue a permit to Sinclair Prairie Oil Company authorizing that company to erect a roadway across State owned submerged tract No. 685.

Section 23 of Article 4 of the Texas Constitution creates the office of the Commissioner of the General Land Office, but prescribes no specific duties of such officer other than that he shall perform "such duties as are or may be required of him by law".

Article 5251, R. C. S., 1925, prescribes the general duties of the Commissioner of the General Land Office in the following language:

"The Commissioner shall superintend, control and direct the official conduct of all subordinate officers of the General Land Office, and execute and perform all acts and things touching or respecting the public land of this State or rights of individuals in relation thereto, as may be required by law, and make and enforce suitable rules consistent therewith. He shall give information to the Governor and Legislature concerning the public lands, or the General Land Office, when required."

The statutes in force at the time Sinclair Prairie Oil Company secured its lease on submerged tract 688 in Nueces Bay did not specifically empower the Land Commissioner to issue a permit of the nature now requested by Sinclair Prairie Oil Company. It is a well settled principle in this State that public officers possess only such powers as are expressly conferred upon them by law or are ne-

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cessarily implied from the powers so conferred. They cannot legally perform acts not authorized by existing laws. See 34 Tex. Jur., Sec. 67, 440; *Gallaghan v. McCowan*, 90 S. W. 319 (Civ. App. Writ of Error Ref.); *Harlingen Independent School District v. C. H. Page & Bro.*, 48 S. W. (2) 983 (Comm. App.).

Section 8 of Chapter 271, Acts 1931, which was in effect at the time of the leasing of tract 688, provides:

"All islands, salt water lakes, bays, inlets, marshes and reefs owned by the State within tide water limits, and that portion of the Gulf of Mexico within the jurisdiction of Texas, and all unsold public free school land, both surveyed and unsurveyed, shall be subject to lease by the Commissioner to any person, firm or corporation for the production of the minerals except gold, silver, platinum, cinnabar and other metals, that may be therein or thereunder, in accordance with the provisions of this Act and subdivision 2, Chapter 4, Title 86, Revised Statutes of 1925, relating to leasing public areas, insofar as same is not in conflict herewith."

Subdivision 2 of Chapter 4, Title 86, R. C. S. 1925, (Articles 5353-5366, Inclusive, R. C. S. 1925), together with Chapter 271, Acts 1931, which confer upon the Land Commissioner power and authority to lease the area in question and prescribe the procedure to be followed in making leases do not, in our opinion, either expressly or by necessary implication, authorize the Land Commissioner to issue a permit of the kind now requested by Sinclair Prairie Oil Company under the facts submitted by you.

Accordingly, we answer your question by stating that, in our opinion, under the facts submitted in your letter and the file accompanying the same, the Commissioner of the General Land Office has no authority to issue a permit to Sinclair Prairie Oil Company to construct a roadway across submerged tract 685.


In conclusion, we wish to make clear that in this opinion we are not passing upon the question of the

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right of the Sinclair Prairie Oil Company to a way of necessity over tract 685. Our opinion is confined to a holding that under existing statutes the Land Commissioner is not authorized to issue a permit of the kind requested.


Yours very truly

ATTORNEY GENERAL OF TEXAS

By 
Robert E. Kepke
Assistant

REK:BT

APPROVED DEC 4, 1939


ATTORNEY GENERAL OF TEXAS

